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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
FEATHERSTONE, MARK D				
ART UNIT		PAPER NUMBER		
2623				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/572,585

Applicant(s)

SPECHTLER ET AL.

Examiner

MARK D. FEATHERSTONE

Art Unit

2623

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-34 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-34 and 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Amendment

Response to Amendment filed 7/22/2008. Claims 19-34 and 36 have been amended. Claim 35 has been canceled. Claims 37-40 have been newly added. Claims 19-34, and 36-40 are pending.

Response to Arguments

Examiner acknowledges applicant's arguments regarding 35 U.S.C. 101 rejections of claims 35-36. Claim 35 has been canceled thus overcoming the rejection. Claim 36 has been amended as examiner suggested, therefore this rejection is withdrawn.

Applicant's arguments with respect to claim 19-34 and 36 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 37 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 37 recites "wherein said second sequence is a continuation of said first sequence". Examiner is unable to determine where in the original specification this feature is supported.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 19-22, 25-30, and 32-34, 36, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al, US PG Pub # 20020133247, hereinafter Smith, in view of Sullivan et al, US Patent # 6593973, hereinafter Sullivan.

With regard to claim 19, Smith discloses a content output device, comprising:

A media player (Figure 1, item 110 media client) unit adapted to access a first sequence of content items (Figure 1, item 106 and [0031]; delivery layer database to determine file to be streamed to client) from a first media source (Figure 1, item 102 media server) and to provide a first content item of said first sequence as an output ([0030]; a user desires a media content from the media server and requests the content), wherein:

Said media player unit is further adapted to receive user feedback for said first content item ([0039]; a user requests an alternate stream in a sequence of media streams relating to a sporting event corresponding to feedback that the first stream is no longer desired), and in response to receiving negative user feedback (as defined by applicant in paragraph [0047], both a "skip" or "dislike" can be read as feedback, and given that a "skip" indicates that a user no longer desires the content, a "skip" can be read as "negative feedback". As indicated in figure 3 and paragraph [0050] of the application, a "dislike" feedback will cause the user profile to be updated and the next song will be played, while a "skip" will not cause the profile to be updated, and the next song will be played. Smith in paragraph [0039] teaches a user desiring to stop playing the current stream and request another stream, corresponding to a "skip" indication).

Send a request to said first media source for a second sequence of content items, said request associated with a delay time during which said second sequence is not available for output by said media player unit ([0039]; a second stream in a sequence of streams relating to a sporting event is requested, which results in a delay while the second media stream is acquired):

Smith deals with the delay between streams by continuing to play the first stream in the sequence, until the second stream is ready to be played. Smith does not disclose accessing a second content item from at least one second media source, wherein said at least one second content item is available in less than said delay time, replacing said first content item with said at least one

second content item as said output during said delay time for which said second sequence is not available, and after said delay time, replacing said at least one second content item with at least a third content item from said second sequence as said output. In an analogous art, Sullivan discloses an apparatus for providing information in video transitions. In Figure 4, and column 5, lines 12-40, Sullivan discloses received (step 414) and storing (step 416) a transition video. When a transition is detected (step 418), the transition video is overlayed during transition (step 426), until video from second source is ready (step 428). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Sullivan to store a video on the device of Smith to be played during a transition by the first media player until the requested video from the second media player is ready to be played, to avoid a transition where no media content is played.

With regard to claim 20, Smith in view of Sullivan discloses the content output device according to claim 19. Smith further discloses wherein said media player unit comprises a first media player having access to said first and second sequences of content items from said first media source and a second media player having access to said second content items from said second media source ([0013]; Smith discloses an embodiment in which there are two media players that each receive a different content stream)

With regard to claim 21, Smith discloses in view of Sullivan discloses the content output device according to claim 19. Smith further discloses wherein

said first media source is located outside of said content device and is adapted to provide said first and second sequences of content items as media streams to said media player unit (Figure 1, items 102 and 110; Smith clearly depicts the media server located outside of the media client device; [0028] Smith describes the content as "media streams")

With regard to claim 22, Smith in view of Sullivan discloses the content device according to claim 21. Smith further discloses comprising a buffer adapted to buffer said first content items provided by said first and second sequences of content media source within said media player unit before said media player unit provides said first content items from said first and second sequences as said output ([0034] Smith describes buffering one or both media streams at the media client).

With regard to claim 25, Smith in view of Sullivan discloses the content output device according to claim 19. Sullivan further discloses wherein said second media source is adapted to load or download said second content items from remote (Figure 1, items 110-120 and column 2, lines 32-41; Sullivan discloses receiving content from a number of remote sources such as a network or a DVD player). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Sullivan to receive the transition video as in Figure 4 step 414, from a number of different sources in order to increase the content choice of the user.

With regard to claim 26, Smith in view of Sullivan discloses the content output device according to claim 25. Smith further discloses wherein at least one second content item is a jingle ([0026]; Smith describes media content that can be streamed to the media player as audio, corresponding to a jingle).

With regard to claim 27, Smith in view of Sullivan discloses the content output device according to claim 19. Sullivan further discloses wherein the content output device is adapted to provide said second content items, when provided to a user of the content output device, from a prepared media file (Figure 4, item 416, the media file is stored, item 424, the item is decoded and presented to the user, corresponding to preparing the file).

Claim 28 is the method corresponding to system claim 19, and is analyzed and rejected accordingly.

With regard to claim 29, Smith in view of Sullivan discloses the method according to claim 28. Smith further discloses comprising receiving said first and second sequences of content items of said first media source as media streams (Figure 4, step 402, receive first media, step 410, receive second media; paragraph [0024]; Smith discloses that the media streams correspond to different camera angles at a sporting event, corresponding to a sequence of content items).

Claim 30 is the method corresponding to system claim 22, and is analyzed and rejected accordingly.

Claims 32-34 are the method corresponding to system claims 25-27, and are analyzed and reject accordingly.

Claim 36 is the computer-readable medium to invoke the steps of method claim 28, and is analyzed and rejected accordingly.

With regard to claim 38, Smith in view of Sullivan discloses the content output device according to claim 19. Sullivan further discloses wherein said media player comprises a single media player adapted to access both said first media source and said second media source (Figure 4 and column 4, lines 47-63; Sullivan discloses that a graphics controller is adapted to receive video from a first source and second source, as well as receiving the video transition overlay from the MPEG decoder 124). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to add the teaching of Sullivan to provide a media player that receives media from multiple sources to obviate the need for multiple media players, which require more disk storage space.

With regard to claim 39, Smith in view of Sullivan discloses the content output device according to claim 19. Sullivan further discloses wherein said media player is adapted to load or download said second content items from said second media source before sending said request to said first media source for said second sequence of content items (Figure 4, step 414, the transition video is received and stored at step 416, before a transition occurs at step 418).

With regard to claim 40, Smith in view of Sullivan discloses the content output device according to claim 19. Smith further discloses wherein said media player is adapted to directly access said second content items such that said media player loads or downloads said second content items from said second media source in substantially real-time (Figure 4 and column 5, lines 6-12; Sullivan discloses that the transition video is downloaded for retrieval during a transition, corresponding to directly accessing the content, vice downloading it when it is needed).

4. Claims 23 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Sullivan in further view of Katinsky et al, US Patent # 6452609, herein after Katinsky.

With regard to claim 23, Smith in view of Sullivan discloses the content output device of according to claim 21, wherein together, they describe choosing a second sequence of content based on negative user feedback of the first content items, however fail to disclose choosing the second sequence of content items to be provided based on feedback:

Katinsky discloses a system that allows a user to download play list sequences from a server based on user preferences. In column 8, lines 35-46, Katinsky discloses that a user play list will be chosen by a website based on user entered preferences. The users can then return to the website and download and listen to the media content. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of

Katinsky to choose content for a user based on received preferences to the system of Smith in view of Sullivan that provides a user alternate content based a negative response to the current content. The combined system would incorporate the negative response, taught by Smith in view of Sullivan, from the user into the user profile, as taught by Katinsky, to choose content more suitable to a particular user.

A person of ordinary skill in the art at the time of invention would have found it obvious to modify the system of Smith with the feature of Katinsky in order to create a media player that plays content based on user likes/dislikes. The advantage of this would have been to provide more targeted content to the user.

With regard to claim 37, Smith in view of Sullivan discloses the content output device according to claim 19, however fail to disclose wherein said second sequence is a continuation of said first sequence. Katinsky discloses that a user can create play lists on a website by creating sequences of songs (column 4, lines 7-14). These lists contain selections by a user, which can be arranged as a continuation of a previous play list of favorite songs. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Katinsky to arrange play lists to be continuations of lists of favorite songs to the system of Smith in view of Sullivan which downloads media content to a media player. The combined system would download user play lists defined by a user to a media player.

5. Claims 24 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, in view of Sullivan, in further view of Szybiak et al, US Patent # 7023488, hereinafter Szybiak.

With regard to claim 24, Smith in view of Sullivan discloses the content output device according to claim 21, however does not disclose wherein said media player unit is adapted such that said first content item which is provided by said first media source and which is currently output is fadeable out in response to said negative user feedback.

However, Szybiak discloses transitioning between sequences of digital information and further discloses the ability to fade out one stream during a transition (column 4, lines 6-12 Szybiak discloses fading out an audio stream). Accordingly, it would have been obvious to one of ordinary skill in the art combine the teaching of Szybiak to fade out the current output when the user decides to output another media content in the system of Smith in view of Sullivan, to provide a smooth transition between content vice an abrupt transition from one content to another, as is well-known in the art.

Claim 31 is the method corresponding to system claim 24, and is analyzed and rejected accordingly.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK D. FEATHERSTONE whose telephone number is (571)270-3750. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F US Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on (571) 272-7296. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E-Signed

/Mark Featherstone/ - Assistant Examiner

/Andrew Y Koenig/
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